cause, and the defendant appeared at a regular term and confessed judgment in open court for the purposes of an appeal. After the case had been twice tried in the superior court and a new trial granted in each instance, the defendant moved to dismiss for want of jurisdiction, although it was conceded that the court had general jurisdiction of the subject-matter and of the parties. *Held,* that after the dismissal for want of prosecution the court, in vacation, was without power to reinstate the cause; and that the motion was properly granted. *Owens v. Cocroft* (Ga. 1914), 80 S. E. 906.

The court in the instant case seems to have made an erroneous application of the general principle that where a court has not been invested with jurisdiction of the subject-matter by law, jurisdiction cannot be conferred by consent. That this is the universal rule needs no citation of authority. On the other hand, where the court has general jurisdiction of the subject-matter but does not have control of the particular case by reason of some informality in the proceedings, such irregularity may be waived by the parties. *In re Spring St.,* 112 Pa. St. 258; *Foreman* v. *Hough,* 98 N. C. 386. Thus it has been held that a court may try an action transferred by agreement from another county, *Milner* v. *Chicago Railroad Co.,* 77 Iowa 755; that jurisdiction over a particular case can be conferred by consent where the court has general jurisdiction of that class of cases, *Greer* v. *Cagle,* 84 N. C. 385; *Tucker* v. *Sellers,* 130 Ind. 514; that consent may restore a jurisdiction which has once attached but which has been exercised so that the court's power is gone, *Brown* v. *Crow,* Hard. (Ky.) 443; *Bogle* v. *Fitzhugh,* 2 Wash. (Va.) 213. What is perhaps the true rule is stated thus in *Groves* v. *Richmond,* 56 Iowa 69, "The rule that jurisdiction cannot be conferred by consent applies only where the court has not the right to assume general jurisdiction of the subject-matter of an action. Where the court has such general jurisdiction, the parties may waive the ordinary process by which it is invoked." Such decisions as that in the instant case are what have subjected our courts to the criticism that they are dilatory and overtechnical.

COVENANTS—AFFIRMATIVE COVENANTS DO NOT RUN WITH LAND.—The Phoenix Mills was seized of a certain tract of riparian land upon which stood a mill run by water power. They were also owners of a second tract situated near the first. In 1872 they conveyed away the second tract, the deed containing a covenant that the grantors, their heirs and assigns would construct and maintain a shaft running from the mill on the first tract to the mill on the second tract to convey power. The grantor later conveyed the first tract to the defendant and the second tract was conveyed to the plaintiff. This action was brought to secure a construction of the covenants and to require defendant to construct the shaft and furnish the power. *Held,* that the covenant being an affirmative one, even though made for the benefit of the second tract, it could not be enforced in the hands of a subsequent grantee. *Miller* v. *Clary et al.* (N. Y. 1913), 103 N. E. 1114.

It is not at all certain that this decision does not change the rule on this question in New York. The court, while admitting that there was much

authority in this country to the effect that affirmative covenants will be binding on subsequent grantees taking with notice, and also that some of the New York decisions would seem to hold the same way, said that the rule finally laid down was the wiser one and did not directly override any New York decision. The court remarked that the New York decisions enforcing covenants to build party walls, fences and covenants to repair were merely exceptions to the general rule as laid down in the principal case. In spite of some decisions to the contrary it has become a well settled rule in England that affirmative covenants, with some exceptions, will not be enforced in the hands of subsequent purchasers. *Haywood* v. *Brunswick Bldg. Soc.*, L. R. 8 Q. B. 403; *London & S. W. Ry. Co.* v. *Gomm*, 20 Ch. Div. 562. On principle it would seem that there should be no distinction between the rules applicable to restrictive and affirmative covenants, since in either case the grantee purchases the land at a less price than he would be able to if there were no covenant in existence. And that is the view taken by the leading text-writers and by the majority of the courts in this country. *Whittenton Mfg. Co.* v. *Staples*, 164 Mass. 319; *Sharp* v. *Cheatham*, 88 Mo. 498; *Willoughby* v. *Lawrence*, 116 Ill. 11; *Maxon* v. *Lane*, 102 Ind. 364; *Gilmer* v. *Mobile Co.*, 79 Ala. 569; *Countryman* v. *Deck*, 13 Abb. N. C. 110; *R. R. Co.* v. *R. R. Co.*, 171 Pa. 284; *Lydick* v. *Balt. Co.*, 17 W. Va. 427; *Fledge* v. *Covington*, 122 Ky. 348; 3 POMEROY, EQ. JUR., § 1275 (3rd ed.); see 17 HARV. L. REV. 176, 18 ID. 214.

DAMAGES—PHYSICAL PAIN AND SUFFERING RESULTING FROM SEDUCTION.—The plaintiff alleged a promise of marriage and breach of the contract by the defendant. Evidence was admitted tending to show that the plaintiff, relying on the defendant's promise, submitted to intercourse resulting in pregnancy and birth of a child. The court instructed the jury that it might, in assessing the damages, take into consideration the pain and physical suffering occasioned by the birth of the child. On appeal *Held*, that the instruction was correct as the physical pain and suffering are not more remote than the mental suffering and humiliation resulting from the seduction and birth of child. *Booren* v. *McWilliams* (N. D. 1914), 145 N. W. 410.

The instruction and the opinion of the Supreme Court on it were only incidental to the decision of the case, but the doctrine advanced and followed by the court is unusual and extends the already liberal rule of compensation for seduction. At Common Law no recovery was allowed a woman for her seduction in an action for breach of a contract of marriage. *Weaver* v. *Bachert*, 2 Pa. St. 80, 44 Am. Dec. 159; *Wrynn* v. *Downey*, 27 R. I. 454, 4 L. R. A. (N. S.) 615. Generally, however, the courts have come to hold that evidence of seduction, resulting pregnancy, and birth of a child, are admissible to show mental suffering, loss of reputation and character, disgrace and humiliation. The theory is that the breach of the contract to marry is not only a breach of contract but also is a breach of trust and confidence, and that the elements of damage before mentioned are consequential results of the breach and therefore are recoverable. The feelings of the parties are so intimately connected with this contract that